



Appeal Decision

Site visit made on 26 April 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2023

Appeal Ref: APP/U5930/X/22/3298278
20 Westerham Road, Leyton E10 7AE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Faiq Arif against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 213305, dated 18 October 2021, was refused by notice dated 2 December 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is: Use of property as a house in multiple occupation (HMO) (Class C4).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development in the heading above from the Council's decision notice. This more accurately describes the use than section 5 of the application form, as it clarifies that the Use Class in this case is Class C4. This is consistent with section 4 of the application form.
3. Pursuant to the Town and Country Planning (Use Classes) Order 1987, a Class C4 use is: 'Use of a dwellinghouse by not more than six residents as a "house in multiple occupation". I have determined the appeal on this basis.
4. Based on the appeal form and questionnaire, neither main party has indicated that I need to enter the site to determine the appeal. I am satisfied this is the case and so I have not entered the building on the appeal site.

Main Issue

5. The main issue is whether the Council's decision to refuse the application was well-founded or not.

Reasons

6. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any existing use of land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use.

7. Section 191(2) of the same Act states that for the purposes of this Act uses are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
9. Planning Practice Guidance states that the applicant is responsible for providing sufficient information to support an application¹. In the case of applications for existing use, it states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
10. Section 171B of the 1990 Act provides time limits within which enforcement action may be taken. For the use described by the appellant in this case, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
11. So based on the evidence provided, I must consider whether the land identified by the appellant changed use to that described by the appellant and continued to be so used for 10 years after the date of the change and before the date of the application, such that the Council could have taken enforcement action at any time during that 10 year period.
12. Section 7 of the application form declares that the use began on 1 September 2016. So on the date of the application the appellant could not possibly demonstrate the relevant immunity period in this case, as 10 years had not elapsed since the date the use is said to have begun.
13. It is clear from section 6 of the application form that the grounds for the application are that the use as an HMO has been established for more than 4 years. But for a case concerning a change of use, the relevant immunity period is 10 years unless it is for the change of use of a building to use as a single dwellinghouse, where a 4 year period applies.
14. The Council made a borough-wide Article 4 Direction, which came into force on 16 September 2014, removing the permitted development right which would otherwise exist to allow a change of use from a dwellinghouse (Class C3) to a Class C4 HMO, without an express grant of planning permission. But as this Direction came into force prior to the date the use as a Class C4 HMO is said to have begun, it cannot be the case that the HMO use in this case was established before an express grant of planning permission was required for it.
15. Taking all of the above into account, I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to demonstrate on the

¹ Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

balance of probability that the appeal building changed to a Class C4 HMO and was used as such continuously for at least 10 years after the date of the change and before the date of the application.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of: "Use of property as a house in multiple occupation (HMO) (Class C4)", was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

L Perkins

INSPECTOR